

Persons who permanently affix modular homes to real estate act as construction contractors and incur Use Tax liability on their cost price of the tangible personal property they physically incorporate into real estate. See 86 Ill. Adm. Code 130.2075. (This is a GIL).

April 29, 2002

Dear Xxxxx:

This letter is in response to your letter dated February 7, 2002. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/Laws/regs/part1200/>.

In your letter, you have stated and made inquiry as follows:

AAA is a wholly owned indirect subsidiary of XYZ. AAA is a manufacturer/subcontractor in the modular housing industry. The plant is located in CITY/STATE and sells homes into the states of STATES.

AAA's houses are constructed in sections using the same raw material components and building codes as those used by site built contractors. The house sections are manufactured in the plant and delivered to the job site on AAA's modular haulers. At the site, AAA set crews affix the sections to a permanent foundation. Approximately half of AAA's sales are of two story homes consisting of four home sections.

AAA does not build the foundation but they do hire the crane that transfers the home sections from the haulers to the foundation. AAA does not connect the home to the utilities but do perform many other subcontractor functions. Examples of subcontractor functions performed by AAA employees are; installing insulation, rafter supports, gables, roof vents, shingles, shutters, siding and soffit, windows, porches, dormer walls and trusses, trim and repairing drywall cracks and nail pops.

AAA's customers or dealers are general contractors, builders, or developers. AAA does not sell homes directly to the homebuyer. AAA does not buy and sell the land nor do they construct attached garages.

In every state where AAA sells their homes, they remit use tax to the destination state based on the cost of raw materials used to construct the home. AAA is currently protesting a sales/use tax audit from the STATE. STATE alleges that AAA should have remitted 100% of the use tax to the STATE, regardless of the destination state for the completed home. STATE wants AAA to file for a refund for all of the use taxes paid to

their neighboring states and pay the tax to STATE instead. In addition, STATE wants all future use tax to be remitted to the STATE and alleges that their neighboring states will give AAA credit for use tax paid to STATE.

In order to settle the protest with the STATE Revenue Cabinet, AAA has agreed to request a formal and binding letter ruling from each appropriate state. The letter ruling needs to answer both of the following questions: Would the State of Illinois refund the use tax that they have received from AAA for past sales into your State? On future sales, would the State of Illinois give AAA credit for use tax paid to the State of STATE for tax due on homes set in Illinois?

If your office has any questions or needs any additional information in order to provide the letter ruling, please send your request directly to me. AAA is anxious to resolve this audit and would appreciate your prompt response.

In Illinois, construction contractors are deemed to be end users of building materials (including modular homes) that they take off the market and permanently affix to real estate. Contractors incur a Use Tax liability on their cost price of the materials permanently affixed to real estate. Illinois retailers making such sales also incur Retailers' Occupation Tax on the gross receipts from the sales of these building materials to the contractor. Thus, contractors having contracts with customers to sell and permanently affix modular homes incur a Use Tax liability on their cost price of materials permanently affixed to real estate. In these situations, the contractors' customers incur no tax liability, and the contractors have no authority to collect tax from them. If the contractors do not remit this tax to Illinois registered suppliers, the contractors must register, self-assess and remit the Use Tax to the Department. Enclosed is a copy of 86 Ill. Adm. Code 130.2075 concerning the taxation of construction contractors.

In contrast, if Illinois sellers of modular homes do not have contracts with the purchasers to permanently affix the home to real estate, they do not act as construction contractors and do not incur a Use Tax liability. Rather, they act as retailers in retail transactions and incur a Retailers' Occupation Tax liability and must collect the corresponding Use Tax from their purchasers unless an exemption applies (e.g., a sale for resale occurs if the purchaser buys the home for resale to a contractor).

Out of state sellers of modular homes who bring modular homes into Illinois and permanently affix them to real property are viewed as construction contractors. As a result, the sellers owe Illinois Use Tax on the modular homes that they permanently affix to real estate. The Use Tax liability is based upon the cost price of the items which they permanently affix to real estate. If sellers construct the modular homes, their cost price is the amount paid to their suppliers on the purchase of the modular homes. If the out of state sellers have already paid a tax in another state regarding the purchase or use of such property, they will be entitled to a credit against their Illinois Use Tax liability to the extent that they have paid tax which was properly due to another state. See 86 Ill. Adm. Code 150.310, enclosed.

When out of state sellers of modular homes sell to customers without a contract to permanently affix the modular home to real estate they act as retailers, not construction contractors. When the out of state seller itself delivers the modular home from out of state to its customer in Illinois, the customer will owe Illinois Use Tax. The out of state seller would generally collect and remit the Illinois Use Tax on behalf of their customer.

Whether a building is “permanently affixed to real estate” is a factual inquiry. You have indicated that your business delivers the modular home to the site and set crews affix the sections to a permanent foundation. Functions that your business performs include installing insulation, rafter supports, gables, roof vents, shingles, shutters, siding and soffit, windows, porches, dormer walls and trusses, trim and repair of drywall cracks and nail pops. Many of these functions appear to be part of permanent installation; we do not have enough information to make a determination, however. You may want to review the enclosed letters ST91-0365 and ST93-0112 for more information.

You have also indicated that your customers are general contractors, builders, or developers. Without more specific information regarding the exact contractual relationship you have with your customers, it is impossible to ascertain your specific tax liability. We hope the information provided above is generally of assistance to you, however, in this determination.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Martha P. Mote
Associate Counsel

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Enc.